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**In the Supreme Court of the United States**

OCTOBER TERM, 1982

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HARVEY COLEMAN PEACOCK, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE FIFTH CIRCUIT*

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**MEMORANDUM FOR THE UNITED STATES**

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## MEMORANDUM FOR THE UNITED STATES

Petitioners contend that profits from racketeering activities acquired through a violation of 18 U.S.C. 1962(c) do not constitute an interest subject to forfeiture under 18 U.S.C. 1963(a)(1).

1. After a jury trial in the United States District Court for the Middle District of Georgia, petitioners were convicted of racketeering and various mail fraud offenses, in violation of 18 U.S.C. 1962(c) and 1341. Petitioner Harvey Coleman Peacock was also convicted on one count of obstruction of justice, in violation of 18 U.S.C. 1510. Harvey Peacock was sentenced to a total of 55 years' imprisonment and fined \$16,000; Hoyle Lamont Peacock was sentenced to 35 years' imprisonment and fined \$13,000; Vera Lee Peacock was sentenced to 25 years' imprisonment and fined \$5,000. After the verdicts on the criminal charges were returned, the jury returned special verdicts of forfeiture

under 18 U.S.C. 1963(a). Harvey Peacock was required to forfeit \$116,927.62; Hoyle Peacock was required to forfeit \$65,319.81; and Vera Peacock was required to forfeit \$75,797.62. The district court then entered an order and judgment of forfeiture (Pet. App. A67-A76). Petitioners appealed both their convictions and the forfeiture order.

A panel of the court of appeals affirmed petitioners' racketeering convictions and all but eight of the mail fraud counts.<sup>1</sup> However, it reversed the RICO criminal forfeitures (Pet. App. A64-A65). After the en banc court of appeals affirmed similar forfeitures in an unrelated case (*United States v. Martino*, 681 F.2d 952, cert. granted *sub nom. Russello v. United States*, No. 82-472 (Jan. 10, 1983)), the court of appeals granted rehearing, vacated the portion of its prior decision relating to the forfeiture issue, and affirmed the district court's forfeiture order (Pet. App. A1-A3).

The evidence at trial is set out in the original panel decision. It showed that petitioners participated in the affairs of an association in fact that committed acts of arson and insurance fraud in Columbia, Georgia, in 1972 and 1973. Petitioners then submitted insurance claims for the fires. The amounts ordered forfeited by the district court were the insurance proceeds petitioners received as a result of their racketeering activities (Pet. App. A67-A76).

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<sup>1</sup>Petitioners Harvey and Hoyle Peacock's convictions on counts 16 through 23, which charged mail fraud in connection with an alleged murder of Hoyle Peacock's wife and the submission of claims on her life insurance policy, were reversed (Pet. App. A65). Six of the forfeitures ordered by the district court were related to the charged predicate acts of murder and fraud in the filings of life insurance claims (Pet. App. A9-A14, A73-A76). Those forfeitures total \$140,127.99.

Petitioners contend (Pet. 13-21) that the proceeds derived from their racketeering activities do not constitute an "interest acquired or maintained in violation of Section 1962" and are thus not subject to forfeiture under 18 U.S.C. 1963(a). This question is identical to that presented in *Russello v. United States*, cert. granted, No. 82-472, (Jan. 10, 1983). In our Memorandum for the United States in that case, a copy of which we are furnishing to counsel for petitioner, we did not oppose the granting of the petition in order to resolve the conflict between the Fifth Circuit's decision in that case and the Ninth Circuit's decision in *United States v. Marubeni America Corp.*, 611 F.2d 763 (1980). The decision in *Russello* is very likely to govern the present case as well.

It is therefore respectfully submitted that the petition for a writ of certiorari in this case should be held pending a decision on the merits in *Russello v. United States*.<sup>2</sup>

REX E. LEE  
*Solicitor General*

JANUARY 1983

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<sup>2</sup>Petitioners do not separately challenge the forfeitures of the life insurance proceeds in light of the reversal of related mail fraud counts. See note 1, *supra*. In any event, their remedy would be a motion to correct an illegal sentence in the district court, pursuant to Fed. R. Crim. P. 35(a).